

**CALIFORNIA COASTAL COMMISSION**

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**Th19a**

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**APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION****Appeal number.....A-3-SLO-03-038, Pier View Plaza****Applicant .....**Mike Hargett; Connie Papousek; Richard Woodland; Mel McColloch**Appellants.....**Ron Wilson; Bruce Gibson; George Hoag; Ronald Tamousch; Rebecca Wyatt;  
Thomas Jackson; Ed & Mary Ann Carnegie; Arley Robinson**Local government .....**San Luis Obispo County**Local decision.....**Approved with Conditions (February 25, 2003)**Project location.....**Ocean Avenue and "E" Street, Cayucos.**Project description .....**Third time extension of local coastal development permit to allow three buildings totaling approx. 15,500 sq. ft. for commercial retail, office and motel units.**File documents .....**San Luis Obispo County Certified Local Coastal Program (LCP); San Luis Obispo Local Permit D940199D.**Staff recommendation ....No Substantial Issue**

**Summary of staff recommendation:** The County of San Luis Obispo approved a third time permit extension allowing the development of three buildings totaling approximately 15,500 square feet for commercial retail, office and motel units. The project extended by the County action is located on the northeast corner of Ocean Avenue and "E" Street, within the central business district of the community of Cayucos, in the Estero Planning Area of San Luis Obispo County.

When substantial site work has not occurred within the established time limit, the LCP allows for a maximum of three, 12-month extensions to the initial time limit. Third time extensions are discretionary actions and are more narrowly focused than the initial consideration of the project. The extension process focuses on intervening changes and their effect on the approval, rather than on re-hearing the merits of the original project. In general, to deny a third time extension would require the decision-making body to find that due to changed circumstances, the project is no longer consistent with the LCP. An approved coastal development becomes void after expiration of the third extension where site work has not first occurred.

Most relevant to this analysis is the appellant's contention that circumstances have changed since the County approved the project, and that the project is no longer consistent with the LCP. The appellant contends that approval of this project was the impetus for new design guidelines for the update to the LCP's Estero Area Plan, which is currently going through the County review process. Given the extensive

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June 2003 Meeting in Long Beach

Staff: J.Bishop Approved by:

public discussions that produced the proposed standards, the appellant feels that this represents a clear change in community opinion regarding the appropriate size of new buildings in the downtown commercial area of Cayucos. The appellant feels that these draft standards represent a changed circumstance and that the project is now inconsistent with the character of the immediate neighborhood and contrary to its orderly development because it does not comply with the proposed design standards.

As discussed in the substantial issue section of this report, the approved project is consistent with third time extension standards of the LCP. Therefore, Staff recommends that the Commission, after conducting the public hearing, determine that **no substantial issue** exists with respect to grounds on which the appeal has been filed.

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## 1. Appeal of San Luis Obispo County Decision



## A. San Luis Obispo County Action

On October 23, 1997, The San Luis Obispo County Planning Commission conditionally approved the proposal to construct the Pier View Plaza mixed-use development project. The project faced initial opposition from the community and the Cayucos Citizen's Advisory Committee (CCAC) in regards to parking, the height and scale of the three buildings proposed, and the planning area standards requiring Western or Victorian style architecture for commercial buildings in Cayucos. On appeal, the Board of Supervisors directed the applicant to work with the community on the details of a modified design. After consultation with the appellants and the Land Use Committee of the CCAC, the building's perceived mass was reduced primarily through larger 2<sup>nd</sup> and 3<sup>rd</sup> floor setbacks and other design elements were added. The Board of Supervisors subsequently approved the project on June 16, 1998. The decision was not appealed to the Coastal Commission. Conditions approved by the County are attached as Exhibit D.

Site work was not begun due to circumstances beyond the control of the applicant and permit extensions were requested. The first and second one-year time extensions allowed under the LCP were authorized by the Planning Director and extended the life of the permit to June 16, 2002. Third time extensions are discretionary actions and may be appealed to the Board of Supervisors and the Coastal Commission. On February 25, 2003, the Board of Supervisors approved a third one-year extension. Under the terms of the LCP, no further extensions can be approved beyond this extension.

## B. Appeal Procedures

Coastal Act section 30603 provides for the appeal of County actions on coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located in a sensitive coastal resource area designated by the LCP. This designation is related to commercial and recreational uses on Ocean Avenue, defined as a Special Community.

The grounds for appeal under section 30603 are limited to allegations that County action to extend the coastal development permit does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* hearing on an appealed action unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed action is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the action is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea and



thus the finding regarding public access and recreation need not be made.

## C. 49-Day Hearing Requirement

Pursuant to Section 30621 of the Coastal Act, an appeal must be set for hearing no later than 49 days after the date on which the appeal is filed with the Commission (since this appeal was filed on March 25, 2003, the 49<sup>th</sup> day was May 13, 2003). In this case, and at Commission staff's request, the Applicant (on April 10, 2003) waived his right to a hearing within 49 days to allow the County to prepare its administrative record, and to allow for Commission staff to prepare a staff recommendation based on that information.

## D. Standard of Review

The County Planning Commission may grant one additional 12-month extension to an approved land use permit after the two initial extensions provided that certain findings can be made. In general, the findings relate to changed circumstances that may have occurred since the initial County approval was made. Therefore, the standard of review for this project is Coastal Zone Land Use Ordinance Section 23.02.050(b), which sets standards for approval of third time extension requests.

## 2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**MOTION:**                    *I move that the Commission determine that Appeal No A-3-SLO-03-038 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

*The Commission finds that Appeal No. A-3-SLO-03-038 does not present a substantial issue with*



*respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## Recommended Findings and Declarations

The Commission finds and declares as follows:

### 3. Project Description

#### A. Project Location

The project that is the subject of the extension is located on the northeast corner of Ocean Avenue and “E” Street in Cayucos, within the Estero Planning Area of San Luis Obispo County. The LCP designates this area as Commercial Retail within which commercial retail units are a principal permitted use. Commercial retail uses, hotels, as well as single and multi-family residences surround the project site. The LCP also designates the area as a Sensitive Resource Area, due to its location within the Special Community designation on Ocean Avenue.

The project involves the construction of three buildings totaling approximately 15,500 square feet on three separate but adjacent lots. The three buildings include of a mix of commercial retail, office space, and six motel suites for weekly rentals. The buildings would be located on the street frontage along Ocean Avenue in the central business district. Parking for the new development is proposed to be located in the rear of the buildings. The buildings are designed in a Victorian style of architecture. The Project plans are attached to this report as Exhibit B.

The site is currently vacant, but was used previously as a Chevron service station. Part of the reason that construction has not yet occurred is due to the considerable amount of time needed for site cleanup and remediation. According to the County staff report, the Regional Water Quality Board has indicated that sufficient cleanup has occurred to allow development of the site.

#### B. County Action To Extend CDP

On February 25, 2003 the County Board of Supervisors made the requisite findings of the CZLUO regarding extensions of time for commencement of construction and approved the extension. In approving the extension the County maintained the original conditions of approval attached to the project from the Board of Supervisors hearing in 1998, but added new findings to reflect LCP requirements for third time extension requests. The Board of Supervisors concluded that the original findings for approval can still



be made and the original conditions of approval are still adequate to ensure the project's consistency with the community character standards and policies of the LCP. The County did recognize that more specific standards have been proposed in the Draft Estero Plan update. However, they concluded that the County at this time must use currently adopted standards to review projects, and may not use standards that are not yet adopted. A complete list of conditions of approval can be found in Exhibit D.

## 4. Substantial Issue Findings

### A. Appellant's Contentions

On March 25, 2003 Ron Wilson, Bruce Gibson, George Hoag, Ronald Tamoush, Rebecca Wyatt, Thomas Jackson, Ed Carnegie, Marry Ann Carnegie, and Arley Robinson appealed the County's action to extend the permit. They contend that the County's action to extend the CDP is inconsistent with the third time extension policies of the LCP. In general, the appellants feel that: 1) the project is appealable because it is out of scale with that of the community under Section 23.01.043(d)(1)(iii); and 2) the findings required for a third time extension cannot be made today under Section 23.02.050b(3). These contentions will be discussed in detail in the following sections.

### B. Issue Analysis

As described, the County Board of Supervisors approved the third time extension request on February 25, 2003. At that time, the Board set February 25, 2003 as the operative approval date for the permit and extended the permit for twelve (12) months beyond that date. Should *no substantial issue* be found, the County action to allow the extension would stand.

#### Issue #1 - Project Is Appealable Because It Is Not Compatible With The Community Character

The appellant's cite CZLUO Section 23.01.043(d)(1)(iii) in support of this contention. The policy states:

***Section 23.01.043(d)(1)(iii) – Grounds for appeal.*** *The development is not compatible with the established physical scale of the area. For the purpose of this section, "established physical scale of the area" shall include but is not limited to existing natural and manmade forms and structures in the area, and includes consideration of height, massing and character of the proposed development with its surroundings."*

This section of the CZLUO is the basis for appeal of new projects. However, this is not an appeal of a project, but is an appeal of an action to extend a coastal development permit for a project. This is an important distinction to make, as the rules for an extension are different. Based on the policy cited in their appeal contention, it appears that the appellants have mistaken the basis for this appeal with the criteria for determining whether the coastal permit can be extended.

The County action is appealable but not on the basis of 23.01.043(d)(1)(iii). This section of the



ordinance applies only to projects located between the first public road and the sea. This project is not located between the first public road and the sea. Furthermore, Section 23.02.04 (d)(1)(iii) references Section 30603 of the Public Resources Code as its authority but mis-states the current version of Section 30603. The specialized bases of appeal outlined in 23.01.043(d) are no longer in the statute. However, the County action is appealable under Section 23.01.043(c)(3)(v) due to the fact that the underlying project is located in an identified "Special Community." The action to extend a permit, however, is analyzed under the LCP rules that apply only to extensions. Therefore, this contention does not raise a substantial issue because the ordinance cited does not apply to this appeal.

#### Issue #2 - Findings For Original Project Cannot Be Made Today

The Coastal Zone Land Use Ordinance (CZLUO) Section 23.02.050(b) provides for three, one-year time extensions. The third time extension requires a public hearing and approval by the County Planning Commission. The Planning Commission must make the following findings:

- 1) *There have been no changes to the provisions of the Land Use Element or Land Use Ordinance applicable to the project since the approval of the land use permit;*
- 2) *There have been no changes in the character of the site or its surroundings that affect how the standards of the Land Use Element or Land Use Ordinance apply to the project;*
- 3) *There have been no changes to capacities of community resources, including but not limited to water supply, sewage treatment or disposal facilities, roads of schools such that there is no longer sufficient remaining capacity to serve the project*
- 4) *That substantial site work could not be completed due to circumstances beyond the control of the applicant;*
- 5) *The findings that were required by Section 23.02.034c(4) to enable initial approval of the permit.*

The appellants contend that the fifth and final required finding listed above cannot be made. Specifically, they cite Section 23.02.034(c)(4)(iv) as support for the appeal contention.

The section reads:

***Section 23.02.034 (c)(4)(iv) – Development Plan – Required Findings. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development***

The following analysis is a review of San Luis Obispo County's action on a third time extension. The analysis for third time extensions is different than for usual project appeals. The analysis is more narrowly focused, centering on changed circumstances to the site, the project, the applicable standards, or



the availability of resources and public services that would now make the original approval inconsistent with the LCP. What should not be evaluated are the merits of the original County approved project. Therefore, this analysis will focus on whether or not something has changed and will not be more wide ranging look that is usually done on initial submittal for project approval.

As you can see from the required findings listed above, the focus of the ordinance is on changed circumstances. In fact, the word “change” appears in the first three required findings. Clearly the focus of the ordinance is on intervening changes that would deem the project inconsistent with the LCP. Coastal development permits are extended if there have been no changes that make the original project approval inconsistent with the certified LCP.

In response to community character concerns, the Cayucos Citizens Advisory Council proposed a new set of quantitative planning area standards for the updated Estero Area Plan. The thrust of the revised standards is to limit new commercial development to two-stories with buildings not to exceed 28 feet in height. The complete text of the newly proposed design standards can be found attached to this report as Exhibit F.

The appellants feel that these standards represent a clear community opinion regarding the appropriate size of new buildings for the Cayucos commercial district. The County Planning Commission in its approval of the third time extension did not feel that the applicants should be required to redesign the project, since it had already been approved long ago and that the Draft Estero Plan Update should not be used to re-evaluate this project. These new standards are under consideration by the Planning Commission at this time and are not currently certified as part of the LCP.

The County approved project, in relationship to the newly proposed draft design standards, is not entirely consistent because the approved development is 2 feet taller and includes a partial third story. Even if the newly drafted standards were to be applied here it does not appear that the inconsistencies would be substantial. The project architect’s response to the draft guidelines can be found attached to this report as Exhibit G. However, the standard of review for this project is the certified LCP. The County approved project is consistent with the certified LCP. Because the draft policies cited are not the standard of review, staff recommends the Commission find no substantial issue with respect to this appeal contention.

The purpose of the LCP section cited above is to ensure required findings are made for the initial approval of projects including this one. This section is relevant to the extension process because the extension ordinance requires that you are still be able to make the original findings in order to extend a project. The County found the project consistent with this section in 1998. No new evidence has been submitted to show that the project no longer conforms to this standard thus; the finding can still be made. On this basis, the project can be extended without raising a substantial issue.

### C. Substantial Issue Conclusion

In summary, the County action to approve a third time permit extension is consistent with the LCP. Since the County’s approval in 1998, no intervening circumstances have been found that would render the County’s determination inconsistent with the LCP. The County has made the requisite findings necessary to





extend the permit for a third time. Finally, the newly crafted draft design guidelines presented by the appellant are not yet certified as part of the LCP and are not the standard of review. Therefore, the appeal raises no substantial issue with respect to the County's action to extend the permit for a third and final time.

